IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JAIPUR BENCH

S.B. CRIMINAL MISC. PETITION NO.1693/07

Ankur Agrawal **Versus** State & Anr.

DATE OF ORDER :: 27/11/2007

HON'BLE MR. JUSTICE AJAY RASTOGI

Mr. Ashish Saxena, for petitioner
Mr. Arun Sharma, Public Prosecutor for State

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Instant petition has been filed assailing order dated 11th August, 2005 whereby learned trial Judge took cognizance against accused-petitioner for offence u/s.138 of Negotiable Instruments Act, 1881 and the revision petition preferred against the said order was also dismissed by a detailed order on 30th August, 2007.

Respondent No.2-complainant filed a complaint on 2nd August, 2005 in which it was alleged that a cheque of Rs.20,000/- drawn on UCO Bank, Ajmer was issued in the name of complainant of which present petitioner was drawer. On its presentation, it was dishonoured on account of insufficient funds and the information of cheque being dishonoured was received by complainant on 21st May, 2005 and he served a notice on 20th June, 2005. Since accused failed to respond the notice within the statutory period, complaint was filed on which learned trial Judge took cognizance against him.

Counsel for petitioner contends that M/s. Parivartan Readymade Shop is a partnership firm, of which petitioner is one of the partner, but the complainant has failed to disclose the capacity in which petitioner has signed as drawer of cheque in question which is requirement u/s.141 of the Act. In the absence of specific averment being disclosed in the complaint how he was in-charge or responsible for conduct of the business of Company and in support of his submission, counsel placed reliance on the judgment of apex court in **S.M.S. Pharmaceuticals Ltd. Vs. Neeta Bhalla [(2005) 8 SCC-89]** which has been further considered in **Raghu Lakshminarayanan Vs. M/s. Fine Tubes [2007 (3) RLW-2037]** and firm of which petitioner as alleged to be one of the partner has not been impleaded as accused which is requirement under law. In such circumstances, cognizance taken against accused-petitioner is not legally sustainable.

Counsel further contends that u/s.138(b) of the Act within 30 days of receipt of information from the Bank notice was to be served and as per complaint itself, complainant received the notice of cheque being dishonoured from the Bank on 21st May, 2005 and notice was sent by him dated 20th June, 2005, according to him, it is not in compliance of statutory requirement under law. As such, very cognizance taken against him on this count also is not sustainable and both the submissions were raised before the court of

revision, but not been considered and appreciated by the revisional court as well.

This court considered the submission and perused the order impugned and also considered the judgments on which counsel has placed reliance.

Instant petition has been filed against the order taking cognizance and at this stage what is to be looked into is that whether the complaint and so also the statement recorded u/s.200 Cr.P.C. disclose offence being committed. It has been specifically alleged in the complaint about the fact that petitioner being drawer of the cheque which was dishonoured on its presentation and on receipt of information by his banker, a notice was served upon the petitioner who was drawer and on account of its non-payment, complaint was filed by him on which learned trial Judge took cognizance against him.

The submission made by counsel that the complaint does not disclose about the fact in regard to capacity in which the petitioner has been impleaded as accused despite the fact that he is one of the partner of firm. In the absence of firm being impleaded, cognizance could not have been taken against accused-petitioner, in opinion of this court, has no substance for the reason that Section 141 of the Act caste obligation upon the complainant to disclose while

impleading the Company and other such person as well which at the time of offence being committed were in-charge and were responsible for conduct of the business of company. But, in the present case, the cheque which has been dishonoured was signed by petitioner as drawer and it does not prima facie disclose that he signed as a partner of the firm and not in his personal capacity. In the absence whereof, there is no basis available for complainant to disclose about the inter se relativity between the Company and accused-petitioner and the judgments on which counsel has placed reliance are of no assistance to him.

So far as the period of 30 days is concerned, it is clear from the complaint itself on information being received on 21st May, 2005, notice was sent on 20th June, 2005, in opinion of this court, it was within 30 days period provided in the statute.

Consequently, this court does not find any substance in the present misc. petition, the same stands dismissed.

[AJAY RASTOGI],J.